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R. P. Giurlando
Government Affairs Director
International Services

DOCKET FILE COPY ORIGINAL

Suite 1000
1120 20th Street, NW
Washington, DC 20036
202 457-3037
FAX 202 457-2545

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OCT 5 - 1995

October 5, 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW Room 222
Washington, DC 20554

Re: Ex Parte Presentation

Pending Application of TLD to Resell IMTS Services On The U.S.
Mainland (File No. ITC-95-248)

✓ **In the Matter of Market Entry and Regulation of Foreign-Affiliated Entities**
(IB Docket No. 95-22; RM-8355; RM 8392)

Dear Mr. Caton:

On October 5, 1995, Charlie Meyers, Elaine McHale, Jim Talbot and I attended a meeting with Scott Harris, Peter Cowhey, Brian O'Connor, George Li, Troy Tanner, Susan O'Connell and Ken Schagrin of the International Bureau to discuss AT&T's position related to the above-captioned proceedings. Alfred Mamlet and Marc Paul, representing TLD, also attended. The attached material was used to facilitate the discussion.

AT&T urged the Commission to apply its Effective Market Access (EMA) test to all applications from foreign carriers seeking to enter the U.S. international services market, including those proposing to provision their services via the resale of other carriers' services. AT&T explained that the harms to the U.S. public interest identified in the FCC NPRM applied equally to both facilities based and resale provisioning of international services, because from a customer perspective, resellers have the ability to provide international services identical to those provided by facilities based carriers. Moreover, because of the steep volume discounts offered by U.S. facilities based

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carriers, international resellers have ample ability to compete for customers on a cost competitive basis. Therefore, resale is a viable market entry vehicle to the U.S. market, and the FCC should subject such applications to its EMA criteria.

In addition, AT&T discussed additional reasons why TLD's specific application should be denied. The FCC's current general "open entry" policy for resellers, as documented in the recent resale authorization to BTNA, requires a balancing of various public interest factors, including the relative openness of the foreign market. On balance, the anticompetitive effect of harms to competition in the U.S. market for global seamless services outweighs the negligible incremental benefit of one more competitor in the already competitive U.S. market. Further, authority to provide international services from the mainland has been identified as a "major" expansion of TLD's current authority in Puerto Rico that would exacerbate the anticompetitive impact on the U.S. market that exists today as a result of Spain's closed market.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. Leland". The signature is fluid and cursive, with a large, stylized initial "R".

Attachment

cc: Mr. Scott Harris
Mr. Brian O'Connor
Mr. Peter Cowhey
Mr. George Li
Mr. Troy Tanner
Ms. Susan O'Connell
Mr. Ken Schagrin

**TLD'S APPLICATION FOR U.S. MAINLAND
INTERNATIONAL AUTHORITY SHOULD
BE DENIED**

- **GENERAL POLICY IN FAVOR OF OPEN ENTRY IS A CASE-BY-CASE BALANCE OF RELEVANT PUBLIC INTEREST FACTORS, WHICH INCLUDE THE BENEFITS AND HARMS OF PERMITTING ENTRY BY A FOREIGN CARRIER WHOSE PARENT PRESERVES ITS MONOPOLY AT HOME**
- **THE ANTICOMPETITIVE EFFECT OF A CLOSED MARKET IN SPAIN OUTWEIGHS THE BENEFIT OF ONE MORE PARTICIPANT IN THE ALREADY-COMPETITIVE U.S. MARKET**
- **MAINLAND AUTHORITY IS A "MAJOR EXPANSION" THAT WILL EXACERBATE THE ANTICOMPETITIVE IMPACT ON THE U.S. MARKET THAT EXISTS TODAY AS A RESULT OF SPAIN'S CLOSED MARKET AND WILL INCREASE THE OPPORTUNITY FOR TLD TO LEVERAGE MONOPOLY POWER IN SPAIN TO THE DETRIMENT OF ITS U.S. COMPETITORS**

PURPORTED BENEFITS OF PERMITTING TLD TO ENTER

BT/MCI ACQUISITION ORDER (1994):

"There does not appear to be any anticompetitive effect from the territorial allocation provision which precludes BT's entry into the U.S. telecommunications market. Today, there are several hundred carriers, both facilities- and resale-based, competing in the U.S. interexchange market. Indeed, the number of existing interexchange carriers, and other potential entrants, suggests that the loss of the incremental competition that might be provided by BT's independent entry into the U.S. telecommunications market would appear to be of little competitive significance."

AMERICATEL:

"I believe there comes a time when one must first look at the undeniably vigorous competition that exists here at home, then contrast it with the degree of competition that our U.S. carriers are permitted to engage in abroad, and finally ask whether the incremental increase in competition here is worth settling for competitive inequity there. Every time the Commission settles for less than a full competitive loaf from our foreign counterparts we cost U.S. carriers substantial revenues and sacrifice jobs and economic growth for what, in our already competitive U.S. market, is a negligible consumer payback." (Concurring Statement of Quello)

**THERE ARE ANTICOMPETITIVE EFFECTS
IN THE U.S. MARKET CAUSED BY SPAIN'S CLOSED
MARKET THAT WILL BE ENHANCED BY GRANTING
TLD MAINLAND ACCESS**

- **TELEFONICA'S EXISTING MONOPOLY GIVES IT THE POWER TO
EXTRACT ABOVE-COST ACCOUNTING RATES ON U.S. -SPAIN
ROUTE TODAY**

**TLD and Telefonica can cause U.S. carrier costs to increase by
reselling U.S. carrier services to increase settlements payments to
Telefonica**

- **PERMITTING TELEFONICA TO PRESERVE ITS CLOSED HOME
MARKET WHILE IT GAINS EFFECTIVE MARKET ACCESS ON THE
U.S. MAINLAND WILL GIVE TELEFONICA/TLD ADVANTAGES
UNAVAILABLE TO U.S. CARRIERS AND WILL LIMIT THE
INCENTIVES OF SPAIN TO LIBERALIZE**

**PRINCIPAL ANTICOMPETITIVE EFFECT WILL BE THE
DIMINISHMENT OF COMPETITION IN THE PROVISION
OF GLOBAL SERVICES TO U.S. CUSTOMERS**

- **THE ABILITY TO OFFER END-TO-END SERVICES GIVES FOREIGN
ARRIERS AN UNFAIR ADVANTAGE**

AmericaTel:

**“Foreign carriers that are permitted to offer end-to-end
services on a U.S. international route could obtain an unfair
competitive advantage unless U.S. carriers are permitted to do the
same” (p. 3996)**

- **KEY TO THE PROMOTION OF COMPETITION AND THE WIDEST
AVAILABILITY OF GLOBAL SERVICES FOR U.S. CONSUMERS IS
LIBERALIZATION OF FOREIGN MARKETS**

Market Access NPRM:

**“Current policies based on traditional correspondent
services model may not adequately address questions of
market access, undue discrimination and potential
anticompetitive effects that arise in today’s evolving
telecommunications market.” (para. 23)**

**“Promotion of effective competition in the global market is
our primary goal. Such competition will achieve for U.S.
consumers reduced rates, increased quality, and new
innovative services including the availability of global
communications services.” (para. 27)**

**“We intend to promote the opportunity for U.S. consumers
to choose among multiple suppliers...” (para. 12)**

**“In a truly competitive global market, entry of foreign
carriers into the U.S. international market would be
procompetitive.” (para. 28)**

**“EXPANSION-BY-INCREMENTALISM”
SHOULD BE REJECTED**

- **Current policy of balancing open entry with relevant public interest factors should be undertaken with a broader view to achieve public interest goal of promoting competition in the provision of new, innovative services to U.S. customers**

Market Access NPRM:

“There is a risk that case-by-case determinations of the public interest may inadvertently underemphasize the general global interest of the United States in promoting a competitive world market.” (para. 23)

MAINLAND ACCESS FOR TLD IS A "MAJOR EXPANSION" OF ITS AUTHORITY

- **TLD AQUISITION ORDER (1992)**

"[T]RAFFIC WILL ONLY ORIGINATE FROM PUERTO RICO AND THE VIRGIN ISLANDS" (p. 113)

"We also observe that should [T]LD desire to expand its operations outside of Puerto Rico and the U.S. Virgin Islands to the U.S. mainland, it would be required to seek our approval under section 214 of the Communications Act." (p. 107, n.3.)

- **TLD 1994 ORDER**

"We stress, however, that TLD's entry into the U.S. Mainland market, which would allow it to compete for U.S. international and domestic traffic, would require a major expansion of its existing authority. We note that we recently approved the acquisition of a U.S. international carrier on the U.S. Mainland by ENTEL, a Chilean carrier, after the parties demonstrated, among other factors, there were effective opportunities for U.S. carriers to compete with ENTEL in its home market." (p. 4045, n.28 (emphasis added))

**TLD'S ADDRESSABLE MARKET IN THE U.S. WILL
INCREASE EXPONENTIALLY**

- **TLD'S ENTRY TO THE U.S. MAINLAND TO RESELL
INTERNATIONAL PUBLIC SWITCHED SERVICES WOULD
BRING A MASSIVE EXPANSION IN ITS ADDRESSABLE
MARKET:**

**MORE THAN TWO HUNDRED TIMES LARGER IN
INTERNATIONAL SERVICES REVENUES:**

PUERTO RICO \$54.7 MILLION

U.S. MAINLAND \$11.2 BILLION

**MORE THAN ONE HUNDRED TIMES THE NUMBER OF
TELEPHONE LINES:**

PUERTO RICO 1.4 MILLION

U.S. MAINLAND 148.2 MILLION



THE FCC SHOULD APPLY AN EFFECTIVE MARKET ACCESS TEST TO ALL 214 APPLICATIONS OF FOREIGN CARRIERS (INCLUDING RESALE APPLICATIONS) TO PROVIDE INTERNATIONAL SERVICES FROM THE UNITED STATES

- 1. ASYMMETRIC MARKET ACCESS IS DETRIMENTAL TO BOTH US CARRIERS AND US CUSTOMERS BECAUSE OF ITS ANTICOMPETITIVE EFFECTS.**
- 2. RESALE AUTHORITY PROVIDES FOREIGN CARRIERS WITH ACCESS TO THE US MARKET – ACCESS THAT IS OFTEN LEGALLY DENIED TO US CARRIERS IN FOREIGN MARKETS.**
- 3. FROM A CUSTOMER'S PERSPECTIVE RESELLERS HAVE AN ABILITY TO PROVIDE INTERNATIONAL SERVICES THAT IS IDENTICAL TO THE ABILITY OF FACILITIES BASED PROVIDERS.**
- 4. BECAUSE OF THE WIDE RANGE IN RATES OFFERED BY US FACILITIES BASED CARRIERS, RESELLERS HAVE AMPLE ABILITY TO COMPETE FOR CUSTOMERS ON A COST COMPETITIVE BASIS.**
- 5. FOREIGN CARRIERS HAVE RECOGNIZED THAT THE FCC'S CURRENT EMA PROPOSAL PROVIDES THEM WITH A LARGE LOOP-HOLE AND THE POTENTIAL ABILITY TO UNDERMINE US OBJECTIVES BY OBTAINING ASYMMETRIC MARKET ACCESS TO THE US.**



THE FCC SHOULD APPLY AN EFFECTIVE MARKET ACCESS TEST TO ALL 214 APPLICATIONS OF FOREIGN CARRIERS (INCLUDING RESALE APPLICATIONS) TO PROVIDE INTERNATIONAL SERVICES FROM THE UNITED STATES

1. ASYMMETRIC MARKET ACCESS IS DETRIMENTAL TO BOTH US CARRIERS AND US CUSTOMERS BECAUSE OF ITS ANTICOMPETITIVE EFFECTS.

ASYMMETRIC ACCESS IMPEDES GLOBAL MARKET COMPETITION:

"A necessary step towards obtaining effective competition [in the global market] is the prevention of anticompetitive conduct in the provision of international services or facilities. In a truly competitive global market, entry of foreign carriers into the U.S. international market would be procompetitive. However, because global competition remains highly asymmetric, unrestricted entry by foreign carriers from closed markets into the open U.S. market has the potential to inhibit competition, particularly with respect to the provision of global communications services to high-end users such as multinational companies." (*Market Entry NPRM*, ¶ 28).

- "For instance a foreign carrier will be able to acquire 1+ access to U.S. consumers and hold itself out as ubiquitous provider of U.S. international services while U.S. carriers could not make the same representations in the foreign carrier's home market." (*Id.*, ¶ 28).
- "In addition, such a carrier would be able to offer its customers benefits such as lower costs and faster provisioning of services provided between its closed markets and the United States." (*Id.*, ¶ 28).

“Such conduct by foreign carriers may have anticompetitive effects for several reasons. First, it preserves and maintains a monopoly in the foreign carrier’s home market. Second, it allows the foreign entity to use that monopoly to gain a competitive advantage in other markets that are, or could be, competitive, including communications within its foreign home market and the United States, communications in the United States and global network services.” (*Market Entry NPRM*, ¶ 29).

- *“The foreign competitor has a competitive advantage, and will therefore win customers, not because of its superior business acumen, responsiveness to customers, or technological innovation, but because of its protected status in its home market.” (Id.)*
- *“The possession of such unmeritorious advantages is a disservice to consumers in all these markets because, in the absence of full competition on the merits by all competitors, consumers do not receive reduced rates, increased quality, and innovation.” (Id.)*

“[A]nother key to global competition is foreign market liberalization. It is unlikely competition could thrive if a particular market keeps out some of its most effective global competitors.” (*Market Entry NPRM*, ¶ 31).

- *“The demand for seamless global services by business means that U.S. carriers serving the other country must be able to originate traffic from their customers in that country to other markets around the world.” (Id.)*
- *“Open markets permit U.S. carriers to respond to foreign carriers in relevant markets, allowing U.S. carriers to be healthier competitors both at home and abroad.” (Id.)*

“[A]n open entry policy, without explicit standards, may not provide sufficient incentive for foreign markets to open.” (*Id.*, ¶ 37)

“In addition, in light of demands by multinational firms for end-to-end telecommunications services and ‘one-stop shopping’, safeguards may not compensate for the disadvantages U.S. carriers face when competing against a foreign carrier that operates in both the United States and closed foreign markets.” (*Id.*).

UNILATERAL MARKET ENTRY IS HARMFUL TO US COMPETITION:

"But many important foreign communications services and facilities markets or market segments remain closed to U.S. competition, even while entities from those markets have entered or seek to enter similar U.S. markets." (Id., ¶ 22)

"In a truly competitive global market, entry of foreign carriers into the U.S. international market would be procompetitive. However, because of global competition remains highly asymmetric, unrestricted entry by foreign carriers from closed markets into the open U.S. market has the potential to inhibit competition, particularly with respect to the provision of global communications services to high-end users such as multinational companies."

"The foreign competitor has a competitive advantage, and will therefore win customers, not because of its superior business acumen, responsiveness to customers, or technological innovation, but because of its protected status in its home market. The possession of such unmeritorious advantages is a disservice to consumers in all these markets because, in the absence of full competition on the merits by all competitors, consumers do not receive reduced rates, increased quality, and innovation." (Id., ¶ 29)

"Some have questioned, however, whether the benefits of such competition are undermined when new entrants are able to succeed because of privileged access to closed foreign markets." (Id., ¶ 36)



THE FCC SHOULD APPLY AN EFFECTIVE MARKET ACCESS TEST TO ALL 214 APPLICATIONS OF FOREIGN CARRIERS (INCLUDING RESALE APPLICATIONS) TO PROVIDE INTERNATIONAL SERVICES FROM THE UNITED STATES

- 2. RESALE AUTHORITY PROVIDES FOREIGN CARRIERS WITH ACCESS TO THE US MARKET – ACCESS THAT IS OFTEN LEGALLY DENIED TO US CARRIERS IN FOREIGN MARKETS.**

CARRIERS AUTHORIZED AS INTERNATIONAL RESELLERS WILL HAVE AUTHORITY TO PROVIDE ANY AND ALL SERVICES TO EVERY CUSTOMER IN THE COUNTRY. THE ONLY LIMITATION – A REGULATORY ONE – IS ON THE LEGAL TITLE TO CERTAIN NETWORK ASSETS, NOT ON THE CONTROL OR USAGE OF THOSE ASSETS.

"UNDER THE PROPOSED [EMA] RULE, A FOREIGN [CARRIER] COULD ENTER THE U.S. MARKET ..." (Market Entry NPRM, comments of TLD, summary at ii)



THE FCC SHOULD APPLY AN EFFECTIVE MARKET ACCESS TEST TO ALL 214 APPLICATIONS OF FOREIGN CARRIERS (INCLUDING RESALE APPLICATIONS) TO PROVIDE INTERNATIONAL SERVICES FROM THE UNITED STATES

- 3. FROM A CUSTOMER'S PERSPECTIVE RESELLERS HAVE AN ABILITY TO PROVIDE INTERNATIONAL SERVICES THAT IS IDENTICAL TO THE ABILITY OF FACILITIES BASED PROVIDERS.**

RESALE IS EFFECTIVE MARKET ENTRY

- Customers of switched service resellers in the U.S. enjoy all the benefits of equal access through 1+ dialing
- Resellers are legally entitled to obtain the same Feature Group D access available to facilities-based carriers and the tariffed nodal services of interexchange carriers
- There is no inherent difference in technical network quality of reseller services
- Resale offers all of the capabilities and price competitiveness necessary to operate in the international and global seamless service market

Carriers "alliance" type services are all capable of being resold. e.g., BT/MCI's global service (Concert) is provided through BTNA, a reseller

CUSTOMER TRANSPARENCY

- Carriers do not advertise to their customers as facilities-based or resellers
- Customers see the carrier as a provider of services. The network provisioning and ownership of the underlying facilities is generally irrelevant, and frequently unknown, to the customer

BUSINESS EFFICIENCIES MAKE RESALE ATTRACTIVE

- Easy entry with few start up costs
- Fewer regulatory requirements, but full regulatory protection as a "carrier"
- Price protection due to competition among facilities-based underlying carriers for reseller business
- Start in small niche markets, and grow
- No special technical background necessary
- Non-discriminatory interconnection terms
- Equal access to all U.S. customers
- Cost-based and supported access charges

RESELLER TREATMENT IN THE US - FEATURES AND FUNCTIONALITY:

- Trunk side access as a carrier
- Terminating access to every telephone number in the U.S.
- 1+ dialing capability (own PIC) for every telephone in the U.S.
- Control over software-defined network construction (SDN)
- Billing and collections by underlying carrier or other billing/collection service provider
- Significant volume discounts, and arbitrage opportunities
- Advanced features (customized billing, custom calling/dialing features)
- Technical support by underlying carrier
- Regulatory oversight of underlying carrier
- Credit card availability



THE FCC SHOULD APPLY AN EFFECTIVE MARKET ACCESS TEST TO ALL 214 APPLICATIONS OF FOREIGN CARRIERS (INCLUDING RESALE APPLICATIONS) TO PROVIDE INTERNATIONAL SERVICES FROM THE UNITED STATES

- 4. BECAUSE OF THE WIDE RANGE IN RATES OFFERED BY US FACILITIES BASED CARRIERS, RESELLERS HAVE AMPLE ABILITY TO COMPETE FOR CUSTOMERS ON A COST COMPETITIVE BASIS.**

STEEP VOLUME DISCOUNTS MINIMIZE ANY POTENTIAL COST DISADVANTAGES OF RESALE:

- Volume discounted prices are frequently below settlement rates, effectively giving resellers the financial benefit of proportionate return
- A wide range of prices, where the highest IMTS price is multiples (2 to 6 times) the best price, allows resellers to be cost competitive for most of the market
- Price protection due to actual and potential competition among facilities based carriers
- Call reversal techniques would give foreign carrier/resellers complete ability to bypass settlement payments to U.S. carriers

RESALE AS A PREFERABLE FORM OF ENTRY:

- No capital investment requirement for facilities, switches, billing systems
- "Economic Value Added" - measure of success for investors
 - Minimize all capital expenditures
 - Measure income viz. capital spent
- Leasing facilities = functional presence
 - Cost of wholesale purchase is less than cost of annualized capital investment cost
 - Avoiding capital investment is recognized in almost all industries. e.g., Car leasing, airlines, railroads, retail sales

**IN RECOGNITION OF THE POTENTIAL COST BENEFITS OF RESALE, AT&T
ITSELF HAS REQUESTED AND RECEIVED FCC APPROVAL TO PROVISION
ITS IMTS SERVICES VIA RESALE**

RESALE IS THE WAVE OF THE FUTURE:

“I believe the most profound change in the next decade in the way local, long-distance, video and wireless companies provide service will be a shift from almost total reliance on their own facility-based network to reliance on reselling someone else’s network or spectrum.” (Dr. Jerry Lucas, Publisher, Billing World, Sept./Oct. 1995)



THE FCC SHOULD APPLY AN EFFECTIVE MARKET ACCESS TEST TO ALL 214 APPLICATIONS OF FOREIGN CARRIERS (INCLUDING RESALE APPLICATIONS) TO PROVIDE INTERNATIONAL SERVICES FROM THE UNITED STATES

- 5. FOREIGN CARRIERS HAVE RECOGNIZED THAT THE FCC'S CURRENT EMA PROPOSAL PROVIDES THEM WITH A LARGE LOOP-HOLE AND THE POTENTIAL ABILITY TO UNDERMINE US OBJECTIVES BY OBTAINING ASYMMETRIC MARKET ACCESS TO THE US.**

TLD RECOGNIZES THE RESALE LOOPHOLE:

"At bottom, the proposed rule would not prevent foreign-affiliated carriers from entering the U.S. market. Rather, the rule might require them to offer international services on a resale basis, which would impose a significant cost penalty, but not foreclose entry. While this cost penalty would harm competition in the United States, it is unlikely to provide a meaningful incentive for foreign carriers and governments to make structural changes in their telecommunications market before they are otherwise prepared to make them." (*Market Entry NPRM, Comments of TLD, Summary at ii (emphasis added)*).

"[T]he proposed rule does not offer much incentive to foreign carriers or foreign governments. Under the proposed rule, a [foreign carrier] could enter the U.S. market and provide facilities-based domestic intra-exchange services and switched international resale services, but it could not provide facilities-based international services. As a result the [foreign carrier] will face increased cost for provision of international services. It would not be completely excluded: more than 125 different companies currently provide such international services on a resale basis in the United States. This cost penalty may hurt the [foreign carrier], and it will certainly restrain competition in the U.S. market, but is unlikely to provide any significant independent pressure on a foreign carrier or its home government to change their positions on telecommunications restructuring in the home country." (*Id., at 30-31 (emphasis added)*).

**PENDING FOREIGN CARRIER RESALE APPLICATIONS CONFIRM THE
EXTENT OF THE RESALE LOOP-**

Teleglobe-Canada
Entel-Chile
Telefonica-Spain
STET-Italy
KDD-Japan
Telstra-Australia

ENTRY BY RESELLERS PERPETUATES CLOSED FOREIGN MARKETS:

- Resale entry into the U.S. confers a competitive advantage on foreign carriers

Advantage is not gained through superior business acumen, responsiveness to customers, or technical innovation, but because its protected status in its home market
- The competitive advantage gained is not diminished by the mode of provisioning (resale or facilities-based) or the legal title to underlying assets
- Recent applications by foreign carrier affiliates demonstrate their view that the resale exemption is a major loophole in the EMA standard. Other applications can be expected.

**ARGUMENTS AGAINST APPLYING EMA RULES TO RESALE
UNDERESTIMATE THE ADVANTAGES OF RESALE ENTRY:**

“There is not as substantial a risk of anticompetitive harm to the global market when we allow foreign carriers into the U.S. international resale market.” (*Market Entry NPRM*, ¶ 72).

- *But resale entry into the U.S. affords foreign carriers the ability to provide any and all services to every customer in the U.S.*
- *Resale entry allows the foreign carrier to provide services at both ends, while U.S. carriers cannot.*
- *Resale entry is effective U.S. market entry and reduces the foreign carrier's incentive to open its market -- as TLD itself admits.*

"The ability to own and control facilities enables a carrier to manage competition by resellers." (Id.).

- *This claim is belied by the number of international resellers - 200+.***
- *Competition among U.S. facilities-based carriers provides attractive for resellers in terms, conditions and prices.***
- *Competitive U.S. facilities based carriers lack the ability to manage competition by reseller competitors.***

"A reseller has minimal pricing flexibility when it must rely on a competitor that also supplies the infrastructure and underlying basic services which a reseller must use to provide its own services." (Id.).

- *Why did AT&T apply to resell the services of its competitors? Because competition among facilities-based carriers does provide pricing flexibility for resellers.***
- *Steep volume discounts, frequently below settlement rates, provide high pricing flexibility for resellers.***

"[T]he reseller cannot guarantee the quality of its services because the underlying facilities necessary to provide service are not within its control." (Market Entry NPRM, ¶ 72).

- *Resellers have bargaining power and regulatory protections when dealing with multiple facilities based carriers. Most resellers can easily migrate to facilities based, but choose not to do so since there are minimal advantages to them of gaining legal title to facilities.***
- *The network quality of resale services is the same as that which the facilities-based carrier provides to all of its customers.***

"We also do not believe that applying an effective market access analysis to resellers would do as much to further the liberalization of foreign markets as applying this standard to facilities-based carriers, which generally have significant influence in the liberalization debate within their primary markets." (Id., ¶ 73).

- *This argument obviously does not apply when the foreign carrier seeking resale entry is a facilities-based carrier in the foreign market -- such as TLD, KDD, Telstra/Digitran and Teleglobe.***
- *The argument doubly does not apply when the foreign carrier seeking resale entry is owned by its home government.***

“Our existing entry standards for resellers have encouraged vigorous and effective competition among international resellers, providing significant benefits to users.”
(Id.).

- *The Commission has also found that because of the large number of carriers competing in the U.S. market “the loss of the incremental competition that might be provided by [a foreign carrier’s] independent entry into the U.S. telecommunications market would appear to be of little competitive significance.” (BT/MCI/Decision, 9 FCC Rcd. 3960, 3970 (1994)).*
- *Unrestricted entry standards have done nothing, and will continue to do nothing to promote the liberalization of foreign markets and a level playing field for U.S. carriers.*